IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 210 of 1989

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADRESA ABBASIA SOCIETY - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR DF AMIN for Petitioner
MS CHANDARANA, AGP for Respondent(s) : 1 & 2
MR HS MUNSHAW for Respondent : 3

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 26/07/2006

ORAL JUDGMENT

1. The petitioner is a Society registered under the

Societies Registration Act as well as a Trust registered under the Bombay Public Trusts Act, 1950. The petitioner Society runs a primary school by the name of Madressa Abbasia Primary School, at Lunavada in Panchmahals district. The said school is a recognized school and is eligible to receive grants towards payment of salaries of teachers employed by it. It is an admitted position, that the said school is a minority institution.

2. By this petition, the petitioner challenges the action of the respondent No.3 – District Primary Education Officer of withholding the grant from 1979-80 onwards in respect of salaries payable to certain untrained teachers appointed by it. It is the case of the petitioner, that the school in question being a minority institution, the provisions of Schedule “F” of the Bombay Primary Education Rules, 1947 [the Rules] are not applicable to it.

3. Sometime in the year 1985, seven teachers of the petitioner school preferred a writ petition being Special Civil Application No.5082 of 1985 before this Court, seeking salaries in accordance with the recommendations of the Second Pay Commission. However, upon constitution of the Gujarat Primary Education Tribunal, the case was transferred to the Tribunal. By an interim order dated 11th

December, 1988, the Tribunal directed the petitioner school to pay the said teachers salaries as per the Education Department G.R. dated 25th September, 1987. It appears that it is only thereafter that the petitioner has approached this Court by way of the present petition challenging the action of the respondent No.3 of withholding grants in respect of certain teachers from 1979 - 80 onwards. It appears that, in the interregnum, prior to the filing of the present petition, there was some correspondence between the petitioner and the respondent No.3 in connection with the impugned action of withholding the salaries of some of the teachers.

4. In response to the petition, the respondent No.3 has filed his counter affidavit opposing the contentions raised in the petition.

5. Heard Mr.D.F.Amin, learned advocate for the petitioner, Mr.H.S.Munshaw, learned advocate for respondent No.3 and Ms.Chandarana, learned Assistant Government Pleader for respondents No.1 and 2.

6. Mr.D.F.Amin, learned advocate for the petitioner submitted that the petitioner being a minority institution is not governed by the provisions of sub-clause (2) of clause (1) of Schedule “F” to the Rules. It was submitted that, therefore, the

petitioner cannot be denied grant towards salaries of teachers on the ground that the said teachers have not been appointed by the Staff Selection Committee.

7. Referring to Annexure “I” to the affidavit in reply filed by the respondent No.3, the learned advocate pointed out that the teachers named at Serial No.2, 3 and 4 therein, possessed the qualifications of B.Ed., in addition to being either graduate or post graduate. It was submitted that this Court in case of *Arunaben Jayantilal Min v. State of Gujarat*, 37[1] GLR 64, has held that the qualifications of Bachelor of Education (B.Ed) in no case can be placed on a lower pedestal than that of P.T.C. It was submitted that, in the circumstances, the said teachers could not be said to be untrained teachers.

8. The learned advocate referred to the provisions of rule 37 of the Rules, with emphasis upon sub-clause (3) of sub-rule (4) of rule 37, which provides that, untrained candidates appointed as primary school teachers shall be required to undergo training either on a stipend or at their own cost, as may be laid down in the instructions issued under Section 24[3] of the Act. It was submitted that the Rules contemplate appointment of untrained teachers, hence, even though the concerned teachers may be

untrained teachers, the respondents were liable to pay grant on the basis of salaries payable to untrained teachers. It was contended that when the State Government recognizes a class of teachers as untrained teachers, it cannot deny payment of grant towards such class of teachers appointed by the petitioner. It was urged that, accordingly, the management is entitled to payment of grant towards salary of the untrained teachers with effect from the date of their respective appointments.

9. Learned advocate for the petitioner drew attention of the Court to the order dated 8th March, 1990 passed by the District Primary Education Committee sanctioning the appointment of the teachers named in the said order as untrained teachers. It was submitted that, in any case, in view of the aforesaid order, the petitioner shall be entitled to grant towards the salaries of the teachers named therein, as per the pay-scale applicable to untrained teachers from the date of their respective appointments.

10. Learned advocate for the petitioner further submitted that, assuming without admitting that the provisions of Clauses 6 and 7 are applicable to the school in question, insofar as one of the teachers namely, Vishnuprasad Harjivan Joshi is concerned, there cannot be said to be any

violation of clause (7) of Schedule “F” inasmuch as, according to this clause, an untrained teacher below the age of 35 years on the date of commencement of the Bombay Primary Education (Gujarat Amendment) Rules, 1978 (hereinafter referred to as the “Amended Rules”) shall be required to get training within a period of 5 years from such date. That, accordingly in case of the said teacher, five years would be over in 1983, whereas his services had been terminated on 30th July, 1979, i.e., within one year of the commencement of the said Rules. In the circumstances, there being no violation of clause (7) of Schedule “F” to the Rules in case of the said teacher, the petitioner was entitled to grant in respect of the salary payable to the said teacher.

11. In conclusion, it was submitted that the petitioner being a minority institution is not governed by the provisions of Schedule “F” of the Rules, accordingly, the impugned action of the respondents being contrary to the provisions of the Act is required to be quashed. It was urged that the petition be allowed and the respondent No.3 be directed to remit to the petitioner grants withheld by him from 1979-80 onwards, forthwith.

12. Mr.H.S.Munshaw, learned advocate appearing on behalf of the respondent No.3 fairly conceded

that in view of the decision of this Court in the case of *Benson Knock Semual v. State of Gujarat*, 1984[1] GLR 691, the provisions of sub-clause (2) of clause (1) of Schedule “F” to the Rules would not be applicable to the petitioner, it being a minority institution. It was submitted that, accordingly the petitioner was not required to appoint teachers through the Staff Selection committee.

13. The learned advocate for the respondent No.3 submitted that, in the aforesaid decision, it has been held that clauses 1[2], 5, 13[1], 15, 24, 27 and 30 of Schedule “F” to the Rules would not be applicable to minority institutions as being violative of Article 30 of the Constitution, and that, no action can be taken by the Government for infraction of these provisions by minority institutions. It was contended that, however, the remainder of the clauses of Schedule “F” have been held to be in the nature of regulatory measures and the validity of the said provisions has been upheld by this Court, in the circumstances, the said clauses would be applicable even to minority institutions like the petitioner school. It was submitted that teachers appointed by the petitioner were required to meet with the qualifications prescribed under clause [6] of Schedule “F” to the Rules. It was submitted that the concerned teachers did not possess the

qualifications of Primary Training Certificate Examination and were thus untrained teachers, hence, the management was not entitled to receive grant in respect of the salaries payable to the said teachers.

14. It was submitted that, under the provisions of Clause (7) of Schedule “F”, untrained teachers, who were below the age of 35 years on the date of the commencement of the Amended Rules, were required to get training within a period of five years from such date. It was submitted that the said Rules came into force in 1978, however, till date, the concerned teachers have not acquired the requisite qualification and have remained untrained teachers, hence, the requirement of clause [7] are not satisfied. Accordingly, the management cannot claim grant towards salaries payable to the said teachers. Mr.Munshaw pointed out that the petitioner school has also violated the provisions of clause [9] of Schedule “F” by not making payment of pay and allowances to the teaching staff as per the scales prescribed by the Government of Gujarat. It was submitted that, in the circumstances, the concerned teachers having been appointed in breach of various clauses of Schedule “F” to the Rules, the respondent No.3 was justified in withholding the grant in respect of the salaries payable to the said teachers.

15. The learned Assistant Government Pleader supported the case of the respondent No.3 and submitted that the petitioner institution was entitled to receive grant only in respect of teachers appointed by it in consonance with the provisions of Schedule “F” to the Rules, as applicable to it.

16. It is an admitted position that, in view of the decision of this Court in the case of *Benson Knock Samual* (supra), the provisions of sub-clause [2] of Clause [1] of Schedule “F” to the Rules are not applicable to minority institutions. Accordingly, it was not necessary for the petitioner school to appoint teachers through the Staff Selection Committee.

17. Clause (6) of schedule “F” to the Rules which prescribes the qualifications for primary school teachers, provides that the management shall appoint only trained teachers who have passed the Secondary School Certificate Examination and also the Primary Training Certificate Examination. For special subjects, teachers shall be recruited in accordance with the qualifications laid down by the Government for such teacher under the vacancies in the District Education Committees of Municipal School Boards in the State from time to time. Thus, the management of the petitioner school could have

appointed only those teachers who met with the qualifications prescribed under Clause (6). The Amended Rules have come into force from 1978. Admittedly, all the teachers (except one) in respect of whom salary grant is claimed by the petitioner, have been appointed after 1978. In the circumstances, it was incumbent upon the petitioner to appoint teachers in accordance with the provisions of Clause (6) of Schedule “F” to the Rules.

18. Clause (7) of Schedule “F” to the Rules provide that all untrained teachers who are below the age of 35 years on the date of commencement of the said Rules shall be required to get training within a period of five years from such date. On a plain reading of the said provision, it appears that the object of the section is to provide an opportunity to those untrained teachers appointed prior to the commencement of the Amended Rules, to acquire qualifications prescribed under the Amended Rules within the time limit specified therein. It appears that the provisions of Clause (7) would be applicable to such untrained teachers (i) who are appointed prior to the commencement of the Amended Rules, (ii) are below the age of 35 years on the said date. There is nothing in the provision to read into it intent to make it applicable to untrained teachers appointed after the date of commencement of the Rules. In the facts of the

present case, it is only in respect of one of the teachers, namely Shri Vishnuprasad Harjivan Joshi, who was appointed on 1st January, 1977, and was aged 28 years on the date of commencement of the Rules, that the management would be entitled to the benefit of Clause (7) of Schedule “F”. The management cannot claim any benefit under Clause (7) of Schedule “F” in respect of the other teachers.

19. In the aforesaid view of the matter, the contention raised on behalf of the petitioner that the State Government having prescribed a pay scale for untrained teachers, the concerned teachers who were possessing the qualifications of untrained teachers were eligible to get salaries prescribed for untrained teachers from the date of their respective appointments and that the management was entitled to receive grant on that basis, does not merit acceptance. The management is not entitled to payment of any grant towards salaries payable to teachers appointed by it in violation of the provisions of Schedule “F”, as applicable to minority institutions.

20. However, insofar as Shri Vishnuprasad Harjivan Joshi is concerned, who falls within the parameters laid down under Clause (7) of Schedule “F” to the Rules from the date of his appointment till the date of his termination on

30th July, 1979, the claim of the school seems to be justified.

21. The contention that, as four untrained teachers have been recognized as such by the order dated 8th March, 1990 passed by the District Primary Education Committee, the petitioner would be entitled to salary grant in respect of those teachers from the date of their respective appointments, does not merit acceptance. A plain reading of the said order does not indicate any intention to make the same applicable with retrospective effect.

22. Mr.Munshaw, learned advocate for the respondent No.3 is justified in submitting that the said order is only prospective in operation; that the District Primary Education Committee has decided the cut off date of 1990 for regularization of the untrained teachers appointed by the petitioner, accordingly, the petitioner is not entitled to claim benefit of the said order with retrospective effect.

23. For the foregoing reasons, the petition is partly allowed to the extent of grant payable to the petitioner school towards the salary of Shri Vishnuprasad Harjivan Joshi. The rest of the reliefs claimed in the petition are hereby rejected. Rule is made absolute to the aforesaid extent only. There shall be no order

as to costs.

24. On 19th January, 1991, while issuing Rule in the matter, this Court had passed an order in the following terms :

> *"Heard.*
> *Rule. In view of the judgment referred to in the affidavit-in-reply, in the case of Benson Knock Samual v/s State of Gujarat and others, 1984(1) GLR page 691, the contention raised by the respondents for withholding the salary grant of two teachers at the rate of Rs.6,278=90 per year does not survive. Hence, the respondents No.1 and 2 are directed to pay up the arrears of admissible salary grant of the said two teachers namely, Mohd. Yusuf Latif Pathan and Kantilal Jethabhai Patel, within a period of two weeks from today. Aforesaid payment of arrears of salary grant will be subject to the final result of this petition.*
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> *As the matter is covered by the Supreme Court Judgment, it is fixed for hearing on 11/3/1991."*

In view of the aforesaid order, payment of arrears of salary grant was subject to the final result of the petition. As the petition has been rejected, except qua Shri Vishnuprasad Harjivan Joshi, the respondents would be entitled to recover / adjust any amounts paid in compliance with the interim order, after adjusting the amount payable towards salary paid by the petitioner to Shri Vishnuprasad Harjivan Joshi.

[HARSHA DEVANI, J.]

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